

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JORGE E. TSUHAKE,

Defendant.

4:15-CR-3027

MEMORANDUM AND ORDER

This matter is before the Court on the defendant's Motion for Extension of Time to File Notice of Appeal (filing [291](#)). With regret, the Court must deny that motion.

In a criminal case, a defendant's notice of appeal must be filed within 14 days of the later of (1) the entry of either the judgment or the order being appealed or (2) the filing of the government's notice of appeal. [Fed. R. App. P. 4\(b\)\(1\)](#). The government has not appealed, and the judgment in this case (filing [257](#)) was entered on January 12, 2016. *See* Rule 4(b)(6) (judgment is entered for purposes of Rule 4(b) when entered on the criminal docket). So, the notice of appeal should have been filed on or before Tuesday, January 26.¹

Upon a finding of excusable neglect or good cause, the Court may extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by Rule 4(b). Rule 4(b)(4). The Court would have no problem, based on the representations in

¹ The Court notes that the 3-day mailing rule set forth in both [Fed. R. Crim. P. 45\(c\)](#) and [Fed. R. App. P. 26\(c\)](#), which extends the filing period "[w]hen a party may or must act within a specified time after service," does not apply here because the time to file a notice of appeal runs from the entry of judgment, not its service upon the parties. *See, Arnold v. Wood*, 238 F.3d 992, 995 n.2 (8th Cir. 2001); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Kurtenbach*, 525 F.2d 1179, 1181-82 (8th Cir. 1975); *see also United States v. Morrison*, 980 F.2d 735 (8th Cir. 1992) (unpublished table decision); *see generally* 16AA Charles Alan Wright and Arthur R. Miller, [Federal Practice and Procedure](#) § 3972.1 (4th ed. 2008 & Supp. 2014).

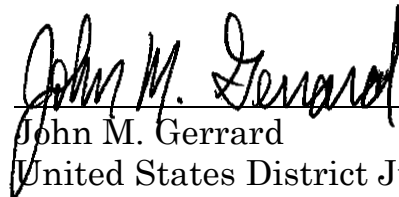
the defendant's motion, finding good cause for an extension. See filing [291](#). But the period of an extension pursuant to Rule 4(b)(4) cannot exceed 30 days, and 30 days from January 26, 2016 was Thursday, February 25.

In short, Rule 4(b)(4) does not permit the Court to grant the defendant the relief he requests. The Court has been unable to find any other basis for an extension, and the defendant's motion does not identify any such authority. Accordingly,

IT IS ORDERED that the defendant's Motion for Extension of Time to File Notice of Appeal (filing [291](#)) is denied.

Dated this 26th day of February, 2016.

BY THE COURT:



John M. Gerrard
United States District Judge